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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 United States of America,
10
11 Plaintiff,

12 v.

13 Jesus Hector Lagarda-Gil,
14 Defendant/Movant.

No. CV-24-00345-TUC-SHR
CR-22-01607-TUC-SHR (JR)

Order Denying § 2255 Motion

15 Pending before the Court is Movant Jesus Hector Lagarda-Gil's Motion to Vacate,
16 Set Aside, or Correct a Sentence pursuant 28 U.S.C. § 2255. (Doc. 1 in CV-24-00345.)
17 For the following reasons, Movant's Motion is denied without a hearing.

18 **I. Background**

19 On July 21, 2022, a grand jury indicted Movant on one count of Conspiracy to
20 Distribute Methamphetamine in violation of 21 U.S.C. §§ 841 and 846, and four counts of
21 Possession with Intent to Distribute Methamphetamine in violation of § 841. (Doc. 25 in
22 CR-22-01607.) On September 21, 2023, Movant had a change of plea hearing before U.S.
23 Magistrate Judge Jacqueline Rateau and entered into a plea agreement. (Doc. 67 in CR-
24 22-01607.) The plea agreement included stipulations to the guideline calculations,
25 including a two-level enhancement for an aggravating role under U.S.S.G. § 3B1.1(c).
26 (Doc. 68 in CR-22-01607.) The plea agreement also included a stipulated sentencing range
27 of 168 to 180 months of imprisonment and permitted Movant to argue for a downward
28 variance to the mandatory minimum term of 120 months. (*Id.*) Movant signed the plea

1 agreement, indicating he pled guilty to Conspiracy to Distribute Methamphetamine in
2 violation of §§ 841 and 846. (*Id.*)

3 On January 22, 2024, the Court sentenced Movant to a 132-month term of
4 imprisonment followed by five years of supervised release. (Doc. 94 in CR-22-01607.) At
5 the sentencing hearing, the Court asked Movant if he was satisfied with the representation
6 defense counsel had provided him in this matter, and Movant stated he was. (Doc. 101 at
7 3:13–15 in CR-22-01607.) The Court also asked Movant if counsel answered any
8 questions he had about the case report or his case in general, and Movant said counsel had
9 done so. (Doc. 101 at 3:9–12 in CR-22-01607.) The Court also went over the plea’s
10 sentencing range (168–180 months). (*Id.* at 4:6–14.) Counsel asked the Court to impose
11 a 120-month sentence, the lowest sentence possible under the plea agreement’s downward
12 variance. (*Id.* at 7:10–12, 19–21.) The Government requested a sentence of 168 months.
13 (*Id.* at 11:10–12.) Ultimately, Movant’s sentence was the result of a downward variance
14 and was much lower than the Government’s requested sentence. (Doc. 94 in CR-22-
15 01607.) Thereafter, defense counsel moved to withdraw from his representation of
16 Movant, and the Court granted that motion. (Docs. 95, 96 in CR-22-01607.)

17 In his § 2255 Motion, Movant asserts three grounds for relief. (Doc. 1 in CV-24-
18 00345.) In Ground One, Movant asserts trial counsel failed to adequately investigate the
19 case and explain the impact of, and alternatives to, a guilty plea. (*Id.*) In Ground Two,
20 Movant claims his guilty plea was entered “unknowingly, unintelligently and
21 involuntarily.” (*Id.*) In Ground Three, Movant contends counsel failed to investigate his
22 criminal history and correct misinformation that caused his sentence to be enhanced. (*Id.*)
23 The Government opposes the Motion. (Doc. 6 in CV-24-00345.)

24 **II. Legal Standards**

25 Under § 2255, the sentencing court may vacate, set aside, or correct a federal
26 prisoner’s sentence if “the sentence was imposed in violation of the Constitution or laws
27 of the United States . . . or is otherwise subject to collateral attack.” A convicted defendant
28 asserting a claim of ineffective assistance of counsel must show both deficient performance

1 and prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish deficient
 2 performance, the defendant “must show that counsel’s representation fell below an
 3 objective standard of reasonableness.” *Id.* at 688. To establish prejudice, “[t]he defendant
 4 must show that there is a reasonable probability that, but for counsel’s unprofessional
 5 errors, the result of the proceeding would have been different.” *Id.* at 694.

6 When a criminal defendant pleads guilty, he cannot “thereafter raise independent
 7 claims relating to the deprivation of constitutional rights that occurred prior to the entry of
 8 the guilty plea,” but instead “may only attack the voluntary and intelligent character of the
 9 guilty plea by showing” counsel’s advice to plead guilty was not “within the range of
 10 competence demanded of attorneys in criminal cases.” *Tollett v. Henderson*, 411 U.S. 258,
 11 266–67 (1973). To establish prejudice on a claim of ineffective assistance of counsel
 12 challenging the voluntary and intelligent character of a guilty plea, a defendant must show
 13 “there is a reasonable probability that, but for counsel’s errors, he would not have pleaded
 14 guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

15 A petitioner is generally entitled to an evidentiary hearing on his § 2255 motion
 16 “[u]nless the motion and files and records of the case conclusively show that the prisoner
 17 is entitled to no relief.” § 2255(b); *see also United States v. Leonti*, 326 F.3d 1111, 1116
 18 (9th Cir. 2003) (noting summary dismissal is warranted if movant’s allegations are
 19 “palpably incredible or patently frivolous”). “If it plainly appears from the motion, any
 20 attached exhibits, and the record of prior proceedings that the moving party is not entitled
 21 to relief, the judge must dismiss the motion and direct the clerk to notify the moving party.”
 22 Rule 4(b) of the Rules Governing Section 2255 Proceedings.

23 **III. Discussion**

24 As detailed below, Movant’s claims lack merit. As a threshold matter, the Court
 25 finds Movant is not entitled to an evidentiary hearing because the Motion and records
 26 conclusively show he is not entitled to relief. § 2255(b); *see also Leonti*, 326 F.3d at 1116.

27 **A. Ground One: Pre-Plea Actions—Ineffective Assistance of Counsel**

28 Movant contends his attorney provided deficient representation in explaining and

1 discussing options and alternatives to entering a guilty plea, explaining the charges, the
2 elements, and the enhancements Movant faced, and discussing Movant's decision to plead
3 guilty. (Doc. 1 at 4 in CV-24-00345.) However, Movant's own statements at the change
4 of plea hearing preclude many of his arguments under this claim and his counsel's
5 declaration also shows no deficiency in counsel's performance. According to counsel's
6 declaration, counsel met with Movant 24 times, and, in those meetings, he explained the
7 risks of proceeding to trial as opposed to negotiating a plea agreement, the potential
8 sentence Movant faced if he went to trial and lost, and the projected sentencing
9 computation including enhancements. (Doc. 6-1 ¶ 5 in CV-24-00345.) The record reflects
10 Movant was repeatedly advised, by counsel and the Magistrate Judge, about various
11 aspects of the plea and the extent of the penalties he faced. (Doc. 6-2 at 6–14 in CV-24-
12 00345.) During his change of plea hearing, Movant stated he understood he was subject to
13 the aggravating participant enhancement and indicated he only signed the plea agreement
14 after reviewing it with his attorney. (Doc. 102 at 7:1–8, 7:19–8:1 in CR-22-01607.) Thus,
15 counsel's performance was not deficient.

16 Even if Movant could show deficient performance, the Court would still deny his
17 Motion on this ground because he was not prejudiced. To prove prejudice, Movant must
18 show “there is a reasonable probability that, but for counsel's unprofessional errors, the
19 result of the proceeding would have been different.” *Strickland*, 466 U.S. 668, 694. Here,
20 there is no reasonable probability Movant would not have pled guilty had he been fully
21 advised of the realities involved in the plea negotiations. The record shows Movant pled
22 guilty after receiving such advisements. Movant claims he was prejudiced by defense
23 counsel's deficient performance because had counsel “apprised, properly informed, not
24 misled or deceived [him], engaged in plea negotiations, investigated th[e] facts, and
25 challenged self-serving statements used against [him], [he] would not have entered a plea
26 of guilty or would have opted differently or sought the most favorable plea offer.” (Doc.
27 1 at 4 in CV-24-00345.) As the Government points out in its response, the disclosure in
28 this case involved Movant's own incriminating statements to an undercover agent, as well

as statements from a confidential informant. (Doc. 6 at 7 in CV-24-00345; *see* Doc. 88 at 4 in CR-22-01607.) Counsel informed Movant of those statements and determined there was not a good-faith basis to suppress the evidence after reviewing and evaluating all disclosure in this case. (*See* Doc. 6-1 ¶¶ 3–4.) Therefore, Movant cannot show counsel’s advice to accept the Government’s plea offer prejudiced him.

B. Ground Two: Guilty Plea was Entered Unknowingly, Unintelligently and Involuntarily

Movant contends his guilty plea is “null and void” because it was entered unknowingly, unintelligently, and involuntarily due to counsel’s “misleading, inaccurate, [and] deceptive” advice. (Doc. 1 at 5 in CV-24-00345.) A plea is voluntary and intelligent if, under the totality of the circumstances, the defendant is made aware of the direct consequences of the plea, the “essential ingredient” of which is the maximum possible penalty. *Little v. Crawford*, 449 F.3d 1075, 1080 (9th Cir. 2006). Based on the foregoing evidence, Movant entered the plea knowingly and was not deprived of any opportunities by counsel’s performance. Therefore, this claim similarly lacks merit.

C. Ground Three: Post-Plea Ineffective Assistance of Counsel

Movant contends his counsel failed to investigate his criminal history and to correct information causing his sentence to be unnecessarily enhanced. (Doc. 1 at 7 in CV-24-00345.) However, as the Government points out in its response, Movant had no criminal history. (Doc. 6 at 9 in CV-24-00345; *see* Doc. 101 at 3:21-23 in CR-22-01607.) Therefore, no amount of investigation into his criminal history was warranted, as his sentence was already predicated upon no criminal history. And, as stated above, counsel’s failure to “correct” the aggravated role enhancement was not a prejudicial error, because Movant knowingly agreed to the plea containing the aggravated role enhancement and his counsel successfully argued for a downward departure from the plea’s range. So, it would have served no strategic end and would have likely put Movant in a worse position had his counsel objected to that aspect of the Pre-Sentence Report. Therefore, this claim fails.

IT IS ORDERED the Motion (Doc. 1 in CV-24-00345) is **DENIED**.

